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Statement on 2009 Senate Bill 139 before the
Senate Committee on Transportation, Tourism, Forestry, and Natural Resources
Dave Blouin, Mining Committee Chair, Sierra Club – John Muir Chapter
January 14, 2010

Thank you for the opportunity to speak today on the need for Senate Bill 139. The Sierra Club strongly supports SB 139. Metallic mining should not be allowed special exemptions or loopholes in state law that put our environment at risk. The current regulatory structure for metallic mining is full of loopholes placed there by the mining industry.

Wisconsin's mining laws are controversial compromise laws, largely written by the mining industry itself more than thirty years ago, and which remain largely untested and unchanged to this day. No other significant environmental legislation improving metallic mining regulation has been passed since, ensuring that Wisconsin's mining code remains a relic filled with loopholes for the benefit of mining company's bottom lines and to the detriment of our health and environment. Moreover, the only metallic mine permitted in Wisconsin since the mining code was drafted is a failure.

The Flambeau Mine

The only metallic mine permitted in Wisconsin in the last thirty years is the Flambeau Mine. The Flambeau Mine was an unusual mine by any measurable industry standard. It was extremely small for an open-pit metallic mine. Its owners chose not to process ore with toxic chemicals on site and instead shipped the ore to Canada for processing thus exporting much of the mine's wastes to another country. Open pit mines are rarely backfilled with waste rock due to the expense of moving millions of tons of materials a second time after valuable ore is removed. Due to the small size and value of the ore, its owners were able to economically backfill the excavated mine pit.

Yet, Flambeau Mining Company's own monitoring data proves that the Flambeau mine is in violation of permit standards for groundwater mine pit backfilled with wastes and the Flambeau River.¹ A stream draining from the Flambeau Mine site is being used as a conduit for contaminated water to be diluted in the Flambeau River.²

The small scale and the production decisions made by its owners should have made the Flambeau mine a model for successful reclamation. It is not a successful model. The record of the Flambeau Mine clearly demonstrates that Wisconsin's mining code is not yet prepared to deal with a large-scale metallic mine and is in need of modification.

Based on this its track record, the Flambeau Mine would not qualify as an example mine for Wisconsin's Mining Moratorium Law. Put another way, the Flambeau mine demonstrates

¹ *Report on Groundwater and Surface Water Contamination at the Flambeau Mine*, David M. Chambers, Ph.D., and Kendra Zamzow, Ph.D., 2009, Center for Science in Public Participation.

² *Ibid.*

that the failure rate for modern metallic mining in Wisconsin using current mining regulations is 100%.

Specific loopholes in current mining law addressed by SB 139 include:

1. *The need for stronger groundwater protection by limiting the amount of allowed groundwater pollution from 1,200 feet in all directions at a mine site to a smaller 150 foot zone.*

The current regulatory framework for groundwater protection at mine sites (known as a "Design Management Zone" or DMZ) is explicitly designed to allow for some groundwater pollution at mine sites within a prescribed DMZ. There may have been a justification for this loophole thirty years ago when mine wastes were routinely dumped in unlined basins without liners, collection systems, and monitoring, and before we understood the perpetual dangers posed to groundwater by mine wastes. Those practices are no longer the best practices of the mining industry and therefore, there is no justification for a DMZ of 1,200 feet.

Moreover, SB 139 does not eliminate DMZ's for mining but reduces the allowed DMZ to ensure that only a limited amount of groundwater is allowed to be polluted, if at all. This regulatory change is a compromise provision in that it allows mining the same specified DMZ as standard municipal waste sites in Wisconsin - provided the mine wastes are not hazardous³.

2. *Exclusion of mine wastes from hazardous waste regulation.*

All Wisconsin industries--*except metallic mining*--are required to comply with hazardous and solid waste laws. The Environmental Protection Agency has previously determined that up to 40% of all metallic mining wastes - currently exempt from hazardous waste regulations - are in fact toxic by definition.

For example, at the proposed Crandon mine, an estimated 100,000 tons (200 million pounds) of highly soluble wastewater treatment sludge containing elevated concentrations of heavy metals and other toxic were proposed to be comingled with mine wastes and backfilled underground and in contact with groundwater. Computer modeling by consultants hired by the state determined these wastes were likely to be a cause of permanent pollution exceeding groundwater standards and requiring perpetual treatment.

Mining wastes that are tested and found to contain hazardous materials should be treated as such under state law. If the wastes are not hazardous, the mining industry has nothing to fear from this provision of SB 139.

3. *Prohibiting the DNR from granting exemptions to rules regulating mine waste dumps containing hazardous waste.*

³ Wisconsin code for solid waste facilities mandates a DMZ of 150 feet. Hazardous waste facilities are required to meet a DMZ of 0 (zero) feet or essentially no degradation of groundwater.

4. *Prohibiting the DNR from applying less protective standards to mining activities.*

Flexibility in state mining law sounds good in theory but the application of exemptions benefits only the mining industry and its efforts to cut costs to produce profit. An industry that generates millions of tons of wastes that must be entombed safely forever should be required to meet the strictest of state standards. The mining industry makes no money from engineering the highest quality waste dumps and environmental controls, and inherently avoids these costs. Current and future residents of Wisconsin ultimately bear the costs of failed mines and mine waste dumps attributable to mining industry cost-cutting. SB 139 seeks only to ensure the highest of standards and criteria for mining are met to ensure safe drinking water and a healthy environment for all and for generations to come.

Thank you for the opportunity to address the need for SB 139. The members of the Sierra Club in Wisconsin thank you for your service and ask you to remain mindful that our state's land and water belong to the people of this state and should not be sacrificed for any future mining company's profits. Our shared responsibility is to preserve our resources for all current and future users.

SB 139: No Special Treatment for Mining
Senate Committee on Environment and Natural Resources
Testimony of Bill McClenahan on behalf of the
Forest County Potawatomi Community
January 14, 2010

Good afternoon, Chairman Holperin and committee members. I am Bill McClenahan of Martin Schreiber & Associates, appearing for the Forest County Potawatomi Community in support of Senate Bill 139. This bill, by Sen. Hansen, will eliminate the loopholes for metallic mining in Wisconsin's environmental laws. It holds metallic mining to the same groundwater and hazardous waste standards as other industries – a concept supported by 90% of Wisconsin adults when we asked about it in a 2001 poll.

This bill was first introduced by Sen. Hansen, with bipartisan support, at the height of the Crandon mine controversy. As you recall, a massive zinc and copper mine was proposed to be built near the headwaters of the Wolf River. Both the mine and a tailings dump would have contained perpetually toxic wastes. The mine and the 16 million tons of wastes in the dump would have been never-ending sources of groundwater contamination. In addition, the mine waste dump would have eventually failed, potentially releasing massive amounts of additional contamination.

The Potawatomi fought the mine application to protect the natural resources and the quality of life in the Northwoods for future generations. They also fought it to protect the Northern tourism economy. The Crandon mine controversy ended when the Forest County Potawatomi Community, along with the Sokaogon Chippewa, used gaming revenues to purchase the mine site, stopping the mine permit application.

But that experience made us aware of major loopholes in Wisconsin's groundwater protection laws. For instance, the law says mining waste is not considered hazardous waste, even if it has all the same characteristics as other hazardous wastes. So, even though the threat of the Crandon mine has been eliminated, it makes sense to close these types of loopholes before a mining application may be proposed at another Wisconsin site.

The bill before you today is a simple one. It says if a general environmental standard is more stringent than a standard for mining, the

general standard will apply. That eliminates the current special treatment and loopholes for mining. It also eliminates the provision that says mining waste is not hazardous waste.

In addition, it requires that mining permits be based on predictions that match up with our state's groundwater standards, not on modeling for impacts at a further distance away. In the case of the proposed Crandon mine, the DNR had said it would enforce groundwater standards at 150 feet away once it was operating. However, it would give the mine a permit based on a prediction of meeting the standards six times further – at 1,200 feet – instead of at the point where the standard will be enforced. It's worth noting that Illinois models groundwater at 150 feet, even for municipal landfills.

This bill simply requires that the modeling predictions should match what the law will require once a mine is running. Otherwise, a mine might just ask for a variance from the law once the mine is operating under the flawed permit and the pollution is occurring.

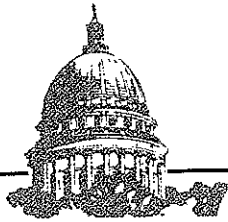
Mining should not be allowed to pollute more than similar industries or activities. Mining waste sites should be subject to the same groundwater standards as landfills or hazardous waste facilities. Mining should be required to meet environmental standards that are at least as strict as those for other activities. It is worth remembering that the EPA's Toxic Release Inventory shows that metallic mining is responsible for more toxic releases than any other source, and that mining is often conducted in the most sensitive ecological settings.

Mining does not deserve special exemptions. If anything, it deserves special concern. It's up to the Legislature to eliminate these environmental loopholes and to provide the needed protection against the impacts of mining and mining wastes on our groundwater.

The Potawatomi commend Sen. Hansen for introducing SB 139 and thank Chairman Holperin for scheduling this hearing. We urge the committee members to support this bill to protect Wisconsin's groundwater from any future threats.

Thank you.

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WISCONSIN STATE SENATOR

DAVE HANSEN

SENATOR – 30TH DISTRICT

ASSISTANT MAJORITY LEADER

**Testimony on Senate Bill 139, Environmental Regulation of Mining
Senate Committee on Transportation, Tourism, Forestry and Natural Resources
330 SW, Capitol
Thursday, January 14, 2010**

Thank you Chairman Holperin and committee members for holding a public hearing today on Senate Bill 139, which would require metallic mining operations to be subject to the same groundwater standards as other Wisconsin businesses and landfills.

I originally introduced this legislation to prevent Nicolet Mining from causing great harm to the pristine lakes and rivers in northern Wisconsin. At that time this legislation was also introduced by Republican Representative Terry McCormick. I was hopeful then this mining groundwater bill would pass the full Legislature before the session clock ran out, but that did not happen.

Since that time the former site of the Crandon Mine was purchased by the tribes in order to protect it from ever being mined again and since there was little talk of new mining or threats from future mines to our natural resources I did not pursue this legislation.

Since that time, however, I have heard from constituents in the northern part of my district who are concerned that mining might once again be proposed in our state, in turn threatening our environment and groundwater.

This concern is the result of mining that is planned in the upper peninsula of Michigan across the river from Wisconsin. There is concern that the same deposits that can be found across the river also run into Wisconsin and that eventually mining may be again be proposed in our state.

While I have seen no plans for such activity at this time it has prompted me to re-introduce this bill again because I now believe it is more probable than possible that there will be future interest in mining in our state and that we need to set the ground rules before it occurs in order to better protect our groundwater.

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Holding mining operations accountable for the hazardous waste they produce is not a radical idea—especially at this time when there is so much renewed concern for protecting our environment. There are concerns with the amount of mercury making it into our lakes. There is concern with the amount of greenhouse gases in our air. There is concern over the need to protect our Great Lakes. We should be equally concerned about the quality of our groundwater. This bill gives us a chance to implement consistent standards—high standards—now for generations to come.

It is also important that we do this now because if there are any interests considering mining in our state they have a right to know the rules before they determine whether or not it makes sense to open a mine here.

Solid waste facilities at mines are subject to less stringent groundwater standards than at landfill sites, even though mines are often located in the most sensitive of environments.

In my mind it is not right that mining companies have not been required to play by the same rules as all other businesses. Before any new metallic mining is done in Wisconsin we should see to it that they abide by the same laws as other Wisconsin businesses and that they meet all state and federal environmental standards.

This bill requires that metallic mines meet the same groundwater standards as everyone else by making sure that standards for solid waste facilities apply to mining waste facilities.


The bill also provides that if the mining waste has the same characteristics as hazardous waste, then it will be regulated as hazardous waste.

This legislation had bi-partisan support at a time when there was bitter division over the Crandon Mine itself. We have found ways to work together on tough issues before. It is my hope that we can work together to pass this important protection for our groundwater by closing this loophole that allows metallic mining companies to be treated differently than all other Wisconsin businesses.

Thank you Mr. Chairman and members.



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Bucyrus announces \$1.3 billion deal

By [Rick Barrett](#) of the Journal Sentinel

Posted: Dec. 20, 2009

Bucyrus International will become the world's largest mining equipment manufacturer after a \$1.3 billion acquisition announced Sunday night.

South Milwaukee-based Bucyrus (BUCY) said it is buying the mining division of Terex Corp., a move that could double Bucyrus' market from roughly \$15 billion to more than \$30 billion a year in potential equipment sales.

Combined, the two companies would have about 10,000 employees in 100 locations.

As a result of the acquisition, Bucyrus plans to add manufacturing and office jobs in South Milwaukee, where both the Bucyrus and Terex product lines will be managed.

"We plan to continue having our worldwide headquarters here," Bucyrus Chief Executive Officer Tim Sullivan said in an interview.

"In the next couple of years, we could be looking at a mix of another 400 to 500 people working here."

Bucyrus and its Milwaukee-based competitor, Joy Global Inc., make the world's largest mining machines, including electric mining shovels that can lift 100 tons in a single scoop and draglines where the bucket alone is the size of a two-car garage.

Terex, based in Westport, Conn., produces the world's largest hydraulic excavators; trucks used in mining; and other heavy equipment. It has 38 facilities around the world, about 2,150 employees, and large manufacturing plants in Germany, Mexico, Texas and West Virginia.

Besides mining equipment, Terex makes cranes, aerial work platforms and construction equipment.

In a recent report, the Connecticut company said it expects sales this year to decline about 50% from 2008, to \$4.9 billion, due to weak global markets and poor access to credit.

The company's mining division represents about one-third of Terex sales.

"Mining is their premier business, so it's a pretty large chunk of their overall business that we are buying," Sullivan said.

This is the largest acquisition that Bucyrus has made, after a \$721 million purchase of German mining equipment company DBT in December 2006.

Terex will give Bucyrus a much wider product offering - making it the world's largest mining equipment manufacturer, according to Sullivan.

"This is a big story for Milwaukee, and it's a huge story for our industry worldwide," he said. "It changes the competitive landscape completely."

Terex officials were not available for comment Sunday.

Months of talks

Bucyrus has been in talks to acquire the company's mining division for months, Sullivan said, partly because Terex realized it lacked the infrastructure needed to support the business that's scattered around the world.

"They have great products, but they don't really have what's needed to deal directly with the large, multinational mining companies," Sullivan said. "What's happened, with the consolidation of the big mining companies around the world, is as they have gotten huge they want to deal with fewer suppliers. If they go to a mine site in western Australia or the Andes, for example, they want to contract with one machinery supplier. Now, with this acquisition, we will be able to offer them a full suite of products."

Cost savings planned

Sullivan said he expects there will be more than \$100 million a year in annual cost savings, achievable by 2012, as the result of merging the two companies' operations.

A substantial portion of the cost savings will come from integrating the companies' manufacturing operations. Additional savings are expected from combining management functions and reducing purchasing expenses, similar to what Bucyrus did when it acquired DBT - a deal announced on Dec. 18, 2006, that closed in May 2007.

More competitive

After the Terex acquisition is complete, Sullivan said, Bucyrus and Terex combined will be able to compete for more than \$30 billion of annual business in a global mining equipment market that has \$40 billion in equipment sales a year.

"It puts us into competition with just about everybody," Sullivan said. "We effectively double our market opportunities, which is absolutely huge."

The acquisition is expected to close in early 2010 and is not subject to shareholder approval at either company.

Under the terms of the agreement, approved by the boards of directors at both companies, Bucyrus will acquire the subsidiaries and assets of Terex Corp. used in its mining equipment business.

Terex may request to receive \$300 million of the purchase price in Bucyrus shares.

To finance the deal, Bucyrus has signed a commitment with a group of financial institutions that will provide funding through an increase in the company's existing credit and a new loan. The commitment letter also provides for modification of certain terms of the company's existing debt.



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